Supreme Court, U.S
FILED

No. 991137 JAN - 3 2000

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1999

BRADFORD METCALF,
Petitioner,
v.
BOYCE F. MARTIN, JR., ALICE M. BATCHELDER, DANNY J. BOGGS, R. GUY COLE, JR., MARTHA CRAIG DAUGHTREY, CORNELIA G. KENNEDY, GILBERT S. MERRITT, KAREN NELSON MOORE, DAVID A. NELSON, ALAN E. NORRIS, JAMES L. RYAN, EUGENE E. SILER, JR., RICHARD F. SUHRHEINRICH, BAILEY BROWN, LEROY J. CONTIE, JR., ALBERT J. ENGEL, RALPH B. GUY, JR., NATHANIEL R. JONES, DAMON J. KEITH, ROBERT B. KRUPANSKY, PIERCE LIVELY, HARRY W. WELLFORD, JOHN PAUL STEVENS, DAVID H. SOUTER, RUTH BADER GINSBURG, STEPHEN G. BREYER, JOHN W. MAGAW, JANET RENO,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

BRADFORD METCALF, *Pro se*
POST OFFICE BOX 33
TERRE HAUTE, IN 47808

QUESTIONS PRESENTED

The following questions are presented by the Petitioner:

1. Does a person threatened with prosecution and subsequently indicted have standing?

2. Does a federal court have jurisdiction once the litigant demonstrates standing concerning a federal question?

3. Do Circuit Courts of Appeals have the authority to modify Supreme Court decisions via judicial construction?

4. Does this Court have a duty to define the word "militia" in the Second Amendment, United States Constitution?

5. Does the Second Amendment, United States Constitution, give an individual the right to own firearms?

PARTIES BELOW

Petitioner Bradford Metcalf was the plaintiff-appellant in the court below. Respondents Boyce F. Martin, Jr., Alice M. Batchelder, Danny J. Boggs, R. Guy Cole, Jr., Martha Craig Daughtrey, Cornelia G. Kennedy, Gilbert S. Merritt, Karen Nelson Moore, David A. Nelson, Alan E. Norris, James L. Ryan, Eugene E. Siler, Jr., Richard F. Suhrheinrich, Bailey Brown, Leroy J. Contie, Jr., Albert J. Engel, Ralph B. Guy, Jr., Nathaniel R. Jones, Damon J. Keith, Robert B. Krupansky, Pierce Lively, Harry W. Wellford, John Paul Stevens, David H. Souter, Ruth Bader Ginsburg, Stephen G. Breyer, John W. Magaw, Janet Reno, were the defendants-appellees in the court below.

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Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR A WRIT OF CERTIORARI

Bradford Metcalf, on behalf of himself, hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, filed on September 1, 1999. The petition for rehearing and rehearing en banc was denied by the same three-judge panel on October 19, 1999. There was no good-faith determination in either the district court or the Sixth Circuit Court of Appeals denying petitioner a good-faith determination of the law in his case.

OPINIONS BELOW

The Court of Appeals' denial of petition for rehearing and suggestion for rehearing en banc is reproduced at la-2a of the Appendix to this certiorari petition (hereafter "Pet. App."). The Court of Appeals' Order is reproduced at Pet. App. 3a-5a. The unreported District Court Order of January 9, 1998 is reproduced at Pet. App. 6a-8a.

JURISDICTIONAL STATEMENT

The Court of Appeals' final judgment was entered on October 19, 1999. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254 (1).

STATUTORY PROVISIONS INVOLVED

This case involves the Second Amendment, United States Constitution, 10 U.S.C. § 311(a), and 28 U.S.C. § 453.

The Second Amendment, United States Constitution provides:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.

10 U.S.C. Section 311 (a) provides:

> **Militia: composition and classes**
> (a) The militia of the United States consists of all able-bodied males at least 17 years of age and except as provided in section 313 of Title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and female citizens of the United States who are members of the National Guard.

28 U.S.C. § 453 provides:

> Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of this office: "I, _ _ _ _ _ _, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _ _ _ under the Constitution and laws of the United States. So help me God."

STATEMENT OF THE CASE

Petitioner is a pro se litigant threatened with prosecution and subsequently indicted for conspiracy, possession of machineguns, and other weapons counts. Petitioner attempted to litigate the meaning of the word "militia" in the Second Amendment in order to be able to defend himself at trial and perfect his appeal as the Sixth Circuit Court of Appeals has conflicting case law in this regard. See e.g., *United States v. Warin*, 530 F.2d 103, 106 (6th Cir. 1976) (no individual right to possess a firearm), *United States v. Sharp*, 12 F.3d 605, 608 (6th Cir. 1993) (American citizen has civil right to keep and bear arms).

The original complaint was filed on September 5, 1997. That complaint is found at Pet. App. 16a-42a. The gist of the complaint is that:

1. The meaning of the word "militia" in the Second Amendment has been changed by judicial construction.

2. The changing of the meaning of words in order to amend the Constitution is not a lawful practice.

3. The addition of words or principles to Supreme Court decisions by the Circuit Courts of Appeals is not a lawful practice.

4. That petitioner in this action, Bradford Metcalf, cannot argue his legal issues until the precise meaning of the word "militia" is *defined* by a court of competent jurisdiction.

Petitioner's Complaint was dismissed by the district court on January 9, 1998, see Pet. App. 6a-8a.

Petitioner filed his notice of appeal on January 20, 1998.

Petitioner filed his appeal brief on March 5, 1998, see Pet App. 9a-15a for Memorandum attached to pro se appellant's brief.

The government filed a reply brief on July 30, 1998, the addendum of which contained petitioner's indictment.

The Order affirming the district court was entered September 1, 1999, see Pet. App 3a-5a. There was no en banc court for rehearing as the appeal was referred to a panel comprised of three judges from outside the circuit. Appellant's petition for panel rehearing was denied on October 19, 1999, see Pet. App. 1a-2a.

Not *once* did *any* of the courts below address the *meaning* of the word "militia" in the Second Amendment nor did those courts address the *issue* of the lower court modification of Supreme Court opinions.

Failing to address the *issues raised* appears to plague the lower courts. See e.g., *United States v. Caldwell*, 954 F.2d 496, 505 (8th Cir. 1992) ([T]he majority fails to address the basic issue raised).

Supreme Court precedent should not normally be pioneered by circuit or district judges. *Day v. Massachusetts Air Nat. Guard*, 167 F.3d 678, 683 (1st Cir. 1999).

Every federal judge in the United States has a duty to uphold the Constitution. See 28 U.S.C. § 453. The Second Amendment is part of that Constitution.

Petitioner's standing was due to a credible threat of prosecution. *Franks v. United States*, 78 F.3d 815, 832 (2nd Cir. 1996).

REASON FOR GRANTING THE WRIT

The lower courts have decided an important federal question in a way that conflicts with relevant decisions of this Court. The Sixth Circuit in particular has conflicting decisions. See *United States v. Warin*, supra, and *United States v. Sharp*, supra.

> Our most recent treatment of the Second Amendment occurred in *United States v. Miller*, 59 S.Ct. 816 (1939), in which we reversed the District Court's invalidation of the National Firearms Act, enacted in 1934. In *Miller*, we determined that the Second Amendment did not guarantee a citizen's right to possess a sawed-off shotgun because that weapon had not been shown to be "ordinary military equipment" that could "contribute to the common defense." *Id.* at 818. The Court did not, however, attempt to define, or otherwise construe, the substantive right protected by the Second Amendment.
>
> *Printz v. United States*, 117 S.Ct. 2365, 2385 n.1 (1997) (Justice Thomas, concurring).

See Memorandum of Law of petitioner's original complaint, Pet. App. 30-42a.

CONCLUSION

For the reason set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

BRADFORD METCALF
POST OFFICE BOX 33
TERRE HAUTE, IN 47808
Pro se petitioner

Dated: December , 1999

APPENDIX

APPENDIX A

No. 98-1124

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRADFORD METCALF,
Plaintiff-Appellant,
v.
BOYCE F. MARTIN, JR., et al.,
Defendants-Appellees.

ORDER

Filed October 19, 1999

Before: KRAVITCH and REAVLEY, Senior Circuit Judges; HARRIS, Senior District Judge.*

PER CURIAM:

Bradford Metcalf petitions the court for a rehearing of its September 1, 1999, order that affirmed a district court judgment dismissing his civil complaint in which he sought injunctive relief and a declaratory judgment pursuant to 28 U.S.C. § 2201.

---

* Honorable Phyllis A. Kravitch, United States Senior Circuit Judge for the Eleventh Circuit, Honorable Thomas M. Reavley, United States Senior Circuit Judge for the Fifth Circuit, and the Honorable Stanley S. Harris, United States Senior District Judge for the District of Columbia, each sitting by designation pursuant to 28 U.S.C. § 294, as a consequence of the recusal of the 22 judges of this court who are among the named defendants in this case.

After careful consideration, the panel concludes that it acted under no misapprehension of law or fact in issuing its order. *See* Fed. R. App. P. 40(a).

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk

APPENDIX B

No. 98-1124

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRADFORD METCALF,
Plaintiff-Appellant,
v.
BOYCE F. MARTIN, JR., et al.,
Defendants-Appellees.

ORDER

Filed September 1, 1999

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 206 limits citations to specific situations. Please see Rule 206 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

This notice is to be *prominently* displayed if this decision is reproduced.

Before KRAVITCH and REAVLEY, Senior Circuit Judges; HARRIS, Senior District Judge.*

---

* Honorable Phyllis A. Kravitch, United States Senior Circuit Judge for the Eleventh Circuit, Honorable Thomas M. Reavley, United States Senior Circuit Judge for the Fifth Circuit, and the Honorable Stanley S. Harris, United States Senior District Judge for the District of Columbia, each sitting by designation pursuant to 28 U.S.C. § 294, as a consequence of the recusal of the 22 judges of this court who are among the named defendants in this case.

PER CURIAM:

Bradford Metcalf appeals a district court judgment dismissing his civil complaint in which he sought a declaratory judgment pursuant to 28 U.S.C. § 2201 and injunctive relief. Upon examination, this panel unanimously agrees that oral argument is unnecessary. *See* Fed. R. App. P. 34(a).

Metcalf filed his complaint in the district court, alleging that state and federal law enforcement detained him, executed a search warrant for his home, and confiscated his computer and some firearms on August 13, 1997. Plaintiff named as defendants twenty-two judges of this court, four justices of the Supreme Court, the Director of the Bureau of Alcohol, Tobacco, and Firearms (ATF), and the United States Attorney General, all in unspecified capacities, and sought declaratory and injunctive relief. Specifically, plaintiff sought: (1) an order defining the term "militia" "as meaning what it meant in 1791;" (2) the Supreme Court justices declared biased in militia litigation; (3) a declaration that federal judges may not amend the Constitution by changing the meanings of its words; (4) an injunction prohibiting the ATF Director and the Attorney General from prosecuting plaintiff until "militia" is defined; and (5) "[t]hat this Court declare the addition of words or principles to Supreme Court opinions by the Circuit Courts of Appeals to be and unlawful practice." Defendants moved to dismiss the complaint and plaintiff responded in opposition. The district court granted defendants' motion and dismissed the complaint. Plaintiff filed a timely notice of appeal.

On appeal, plaintiff contends that: (1) the district court is biased against the Second Amendment; (2) the judicial defendants have changed the meaning of the word "militia" without authority to do so; and (3) the likelihood of his federal criminal prosecution presents a justiciable case or controversy. Defendants respond that the district court's

judgment was proper. Upon *de novo* review, *see Duncan v. Rolm Mil-Spec Computers*, 917 F.2d 261, 263 (6th Cir. 1990); *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990), we affirm the district court's judgment essentially for the reasons stated by the district court in its order of dismissal filed January 9, 1998.[1] Plaintiff essentially seeks to enjoin an ordinary criminal prosecution. However, plaintiff did not allege any unique or compelling circumstances that would warrant an exception to the rule that "equity will not interfere with the criminal processes, by entertaining actions for injunction or declaratory relief in advance of criminal prosecution." *Zemel v. Rusk*, 381 U.S. 1, 19 (1965). Finally, we note that plaintiff's claim that Judge Enslen is biased against Second Amendment claims because he authored a scholarly treatise on constitutional law that did not address the Second Amendment is meritless. *See Liteky v. United States*, 510 U.S. 540, 555-56 (1994).

Accordingly, the district court's judgment is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk

---

[1] We acknowledge that plaintiff was indicted three months after the district court dismissed his complaint. Nevertheless, the plaintiff's complaint fails to make any connection between his prosecution and the actions of the named defendants. Accordingly, the district court's citation to *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (plaintiff's "injury in fact" must be "fairly traceable to the challenged action of the defendant" to provide standing), to support its conclusion that plaintiff's complaint failed to state a case or controversy is dispositive.

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:97 CV 756
Honorable Richard Alan Enslen

BRADFORD METCALF,
Plaintiff,
v.

BOYCE F. MARTIN, JR., *et al.*,
Defendants.

ORDER OF DISMISSAL

Filed January 9, 1998

This matter is before the Court on the defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) due to lack of subject matter jurisdiction. The defendants are twenty-two judges of the Sixth Circuit Court of Appeals, four Supreme Court Justices, John Magaw (Director of the Bureau of Alcohol, Tobacco and Firearms), and Janet Reno (United States Attorney General).

Plaintiff's complaint describes incidents occurring on August 13, 1997. According to plaintiff, he was then stopped by state police officers, his residence was searched by agents of the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms, firearms belonging to him

and other militia members were seized by the agents, and personal property belonging to him was damaged. Plaintiff fails to name any of the persons who conducted the search as defendants. The named defendants have no connection to the events described in the complaint. Plaintiff's reason for naming the defendants is only that he has disagreed with the named defendants' interpretations of the Second Amendment in previous, unrelated court decisions and agency actions.

While plaintiff certainly has a First Amendment right to disagree with judges and administrators, the right of academic freedom and debate does not give him standing to sue those with whom he disagrees. Rather, Article III of the United States Constitution imposes a "case and controversy" requirement--which means that judges may not render legal decisions based on academic disputes. In the context of the enforcement of the criminal laws relating to firearms (as described in the complaint), the controversy requirement is not met unless a plaintiff has been indicted, arrested or threatened with criminal prosecution by one of the defendants. *Steffel v. Thompson*, 415 U.S. 452, 459 (1974); *Parker v. Turner*, 626 F.2d 1, 5 n. 11 (6th Cir. 1980); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (holding that "injury in fact" suffered by plaintiff must be "fairly traceable to the challenged action of the defendant" in order to permit standing). There being no such allegation here, the plaintiff has failed to meet the case and controversy requirement and subject matter jurisdiction is improper. Furthermore, equity has a general rule against enjoining a possible, future indictment. Although there are limited circumstances when this rule will not apply, the making of vague allegations as to a possible future prosecution are not exceptions to the rule. *Zemel v. Rusk*, 381 U.S. 1 (1964).

THEREFORE, IT IS HEREBY ORDERED that the defendants' motion (Dkt. No. 7) is GRANTED and the instant complaint is DISMISSED pursuant to Federal Rule of Civil Procedure 12(b)(1) due to lack of subject matter jurisdiction.

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
Chief Judge

DATED in Kalamazoo, MI:
Jan. 9, 1998

APPENDIX D
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case Number: 98-1124

METCALF vs. MARTIN

(Lower Court No. 97CV756)

PRO SE APPELLANT'S BRIEF

MEMORANDUM

QUESTIONS PRESENTED

I. Was the Lower Court Biased Against The Second Amendment, U.S. Constitution?

II. Was The Plaintiff-Appellant's "Injury In Fact" "Fairly Traceable To The Challenged Actions Of The Defendants"?

III. Did The Lower Court Misconstrue The Cases Cited In Its January 9, 1998 Dismissal Order?

IV. Did The Defendants Have The Authority To Change The Meaning Of The Word "Militia" From The Meaning Intended By Its Authors In 1791, The Statute Enacted By Congress, 10 U.S.C. § 311(a), And Did The Lower Court Have A Duty To Adjudicate The Issue?

ARGUMENT

I. Was the Lower Court Biased Against The Second Amendment, U.S. Constitution?

> I don't want to know what the law is, I want to know who the judge is.
>
> Roy M. Cohn, quoted in *New York Times Book Review*, 3 Apr. 1988, at 24.

The judge in the lower court was Judge Richard Alan Enslen. Unknown to the plaintiff-appellant at the time the instant action was filed, Judge Richard Alan Enslen had co-authored a book entitled, *Constitutional Law Deskbook: Individual Rights, Second Edition* (Lawyers Cooperative Publishing 1993).

What is disturbing about this book is that it completely *omits* any reference whatsoever to the Second Amendment, U.S. Constitution. It omits any reference to the word "militia" in the index and words and phrases section, and *begins* with the following:

> *Precise language* is a basic requirement of every intellectual discipline and professional endeavor. This is particularly true in the field of law. We undertook to write *Constitutional Law Deskbook: Individual Rights* in pursuit of clear and precise legal language. Five years have passed since the publication of the First Edition. During that time, a large number of *decisions* have *altered* the substance of American constitutional law. The Second Edition continues the pursuit of clarity and precision by incorporating these decisions. Approximately 300 hundred (sic) rulings not represented in the original *Deskbook* are included in this addition.
>
> *Id.*, Preface at v.

The *only* defense plaintiff-appellant has against the BATF is the application of clear and precise legal language by the defendants concerning the meaning of the word "Militia" in the Second Amendment.

Federal judges have a duty to enforce the Constitution, whether they agree with it or not. Lund, *The Second Amendment, Political Liberty, And The Right To Self Preservation*, 39 Alabama Law Review 103 (1987).

There are two (2) ways to adjudicate a case:

> Let justice be done though the heavens fall.
>
> Lord Mansfield in *Rex v. Wilkes*, 4 Burrow's Reports 2527, 2562 (1768).

Or :

> It is not the technical legal conception that leads to the decisions pronounced by the judge, but it is the decision which the judge intends to pronounce which lead him to the finding of the technical reasons therefor—the decisions themselves being the result of the judge's views on the social and economic questions involved in the solution of the apparently abstract constitutional problems.
>
> Louis B. Boudin, *Government by Judiciary*, Vol. I, page 338 (1932).

The latter is described in a dissenting opinion in this Circuit:

> As Hamilton[1] observed:

---

1 *The Federalist No. 78*, at 468-469 (Alexander Hamilton) (Clinton Rossiter Ed., 1961).

> It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proved anything would prove that there ought to be no judges distinct from that body.
>
> *Bichel v. Korean Air Lines Co. Ltd.*, 96 F.3d 151, 159 (6th Cir. 1996) (dissent).

Apparently, the lower court took the latter course.

II. Was The Plaintiff-Appellant's "Injury In Fact" "Fairly Traceable To The Challenged Actions Of The Defendants"?

The BATF did not change the meaning of the word "Militia" in the Second Amendment: the defendants in this action did. There is such *confusion* in the courts below the Supreme Court concerning the meaning of the word "militia" that either:

1. This case must proceed to the Supreme Court itself or
2. Those who *authored* the confusion must untangle it.

Compare e.g., *United States v. Sharp*, 12 F.3d 605 (6th Cir. 1993) (American citizen has civil right to keep and bear arms), *United States v. Warin*, 530 F.2d 103, 106 (6th Cir. 1976) (there is no individual right to possess a firearm).

Which one is it?

III. Did The Lower Court Misconstrue The Cases Cited In Its January 9, 1998 Dismissal Order?

Steffel v. Thompson, 94 S.Ct. 1209 (1974) concerns federal court declaratory relief of a pending *State* criminal prosecution. This case has *nothing* to do with plaintiff-appellant's issue.

> When the law has been crafted with the clarity of crystal, it also has the qualities of a glass slipper: it cannot be shoe-horned onto facts it does not fit, no matter how appealing they might appear.
>
> *Person's Co., Ltd., v. Christman*, 900 F.2d 1565, 1570 (Fed. Cir. 1990)

Just as surely as Cinderella's step-sister could not make the fit, the lower court has failed in its attempt to shoe-horn precedent onto plaintiff-appellant's issue no matter how appealing it might appear.

The citation of *Parker v. Turner*, 626 F.2d 1, 5 n. 11 (6th Cir. 1980) is more than merely inaccurate, it states the *exact opposite* of the construction the lower court gave it.

A significant problem is presented by the requirement that there be an actual case or controversy for the federal court to consider. Ordinarily, if criminal prosecution is *threatened* there exists the requisite controversy, e.g., *Doran v. Salem Inn, Inc.*, 95 S.Ct. 2561 (1975) (general likelihood of prosecution) *Steffel v. Thompson*, 94 S.Ct. 1209, 1213-14 (1974) (plaintiff was threatened with prosecution and had a companion who had been prosecuted).

Apparently the lower court didn't bother to *read* the "Facts" section of plaintiff-appellants complaint. Plaintiff-Appellant made more than "vague allegations."

IV. Did The Defendants Have The Authority To Change The Meaning Of The Word "Militia" From The Meaning Intended By Its Authors In 1791, The Statute Enacted By Congress, 10 U.S.C. § 311(a), And Did The Lower Court Have A Duty To Adjudicate The Issue?

The issues that were not addressed by the District Court are as follows:

1. What is the actual meaning of the word "Militia" in the Second Amendment, U.S. Constitution?

2. Do federal judges have the authority to change the meaning of the word "Militia" in the Second Amendment, U.S. Constitution?

3. Do federal judges have the authority to ignore the Acts of Congress, 10 U.S.C. § 311(a), defining the word "Militia?"

4. Do federal judges in the Circuit Courts of Appeal and below have the authority to engage in judicial construction (i.e., rewriting) of Supreme Court opinions?

5. Did the lower court have a duty to adjudicate the issue raised?

> **§ 453. Oaths of justices and judges**
> Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of this office: "I, _ _ _ _ _ _, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _ _ _ under the Constitution and laws of the United States. So help me God."
>
> Any person in government should:

Uphold the Constitution, laws and regulations of the United States and of all governments therein and never be a party to their evasion.

[display in government building] Public Law 96-303, Sec. 3 (3) II, 94 Stat. 855, 856 July 3, 1980.

WHEREFORE, this Court must, not may, address the issues raised and reverse the decision of the lower court.

Respectfully submitted,

Date: March 5th, 1998

/s/ Bradford Medcalf
Bradford Metcalf
22510 V Drive
Olivet, Michigan
(616) 749-2049

APPENDIX E

In The
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Case No. 1: 97CV756

BRADFORD METCALF
Plaintiff,
v.
BOYCE F. MARTIN, JR., ALICE M. BATCHELDER, DANNY J. BOGGS, R. GUY COLE, JR., MARTHA CRAIG DAUGHTREY, CORNELIA G. KENNEDY, GILBERT S. MERRITT, KAREN NELSON MOORE, DAVID A. NELSON, ALAN E. NORRIS, JAMES L. RYAN, EUGENE E. SILER, JR., RICHARD F. SUHRHEINRICH, BAILEY BROWN, LEROY J. CONTIE, JR., ALBERT J. ENGEL, RALPH B. GUY, JR., NATHANIEL R. JONES, DAMON J. KEITH, ROBERT B. KRUPANSKY, PIERCE LIVELY, HARRY W. WELLFORD, JOHN PAUL STEVENS, DAVID H. SOUTER, RUTH BADER GINSBURG, STEPHEN G. BREYER, JOHN W. MAGAW, JANET RENO,
Defendants.

PETITION FOR
DECLARATORY AND INJUNCTIVE RELIEF
28 U.S.C. § 1331, § 2201 and § 2202

STATEMENT OF THE CASE

Plaintiff is currently under investigation by the BATF for federal firearms violations. Plaintiff is unable to either defend himself in any pending criminal proceeding or civil litigation until the word "militia" in the Second Amendment can be restored to its *original meaning* from the present perverted definition to which it has been amended by judicial construction ("judicial activism").

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to:

2. 28 U.S.C. § 1331, the general federal question statute.

3. 28 U.S.C. § 2201, the federal declaratory relief statute, to declare the rights of parties.

4. 28 U.S.C. § 2202, the federal injunctive relief statute.

PARTIES

5. Plaintiff Bradford Metcalf is a private citizen with a residence of 22510 V Drive, Olivet, Michigan 49076.

6. Defendant Boyce F. Martin, Jr. is the Chief Judge of the Court of Appeals for the Sixth Circuit with a business address of 601 West Broadway, Room 209, Louisville, Kentucky 40202.

7. Defendant Alice M. Batchelder is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 807 East Washington Street, Suite 200, Medina, Ohio 44256.

8. Defendant Danny J. Boggs is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 601 W Broadway, Room 220, Louisville, Kentucky 40202-2227.

9. Defendant R. Guy Cole, Jr. is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business

address of 127 U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215.

10. Defendant Martha Craig Daughtrey is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 304 Customs House, 701 Broadway, Nashville, Tennessee 37203.

11. Defendant Cornelia G. Kennedy is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 231 West Lafayette Boulevard, Room 744, Detroit, Michigan 48226.

12. Defendant Gilbert S. Merritt is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 303 Customs House, 701 Broadway, Nashville, Tennessee 37203.

13. Defendant Karen Nelson Moore is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 201 Superior Avenue NE, Suite 256, Cleveland, Ohio 44114.

14. Defendant David A. Nelson is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 524 Potter Stewart Courthouse Building, 1000 East 5th Street, Cincinnati, Ohio 45202.

15. Defendant Alan E. Norris is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 85 Marconi Boulevard, Room 328, Columbus, Ohio 43215-2823.

16. Defendant James L. Ryan is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 231 West Lafayette Boulevard, Room 611, Detroit, Michigan 48226-2799.

17. Defendant Eugene E. Siler, Jr. is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 1380 West 5th Street, London, Kentucky 40741-1615.

18. Defendant Richard F. Suhrheinrich is a Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 315 West Allegan, Room 241, Lansing, Michigan 48933-1514.

19. Defendant Bailey Brown is a Senior Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 1116 Federal Building, 167 North Main Street, Memphis, Tennessee 38103.

20. Defendant Leroy J. Contie, Jr. is a Senior Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 365 U.S. Courthouse & Federal Building, 2 South Main Street, Akron, Ohio 44308.

21. Defendant Albert J. Engel is a Senior Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 640 Federal Building, 110 Michigan Street NW, Grand Rapids, Michigan 49503.

22. Defendant Ralph B. Guy, Jr. is a Senior Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of P.O. Box 7910, Ann Arbor, Michigan 48107-7910.

23. Defendant Nathaniel R. Jones is a Senior Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 524 Potter Stewart Courthouse Building, 1000 East 5th Street, Cincinnati, Ohio 45202.

24. Defendant Damon J. Keith is a Senior Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 231 West Lafayette Boulevard, Room 240, Detroit, Michigan 48226.

25. Defendant Robert B. Krupansky is a Senior Circuit Judge of the Court of Appeals for the with a business address of 328 U.S. Courthouse, 201 Superior Avenue NE, Cleveland, Ohio 44114.

26. Defendant Pierce Lively is a Senior Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of P.O. Box 1226, Danville, Kentucky 40423-5226.

27. Defendant Harry W. Wellford is a Senior Circuit Judge of the Court of Appeals for the Sixth Circuit with a business address of 1176 Federal Building, 167 North Main Street, Memphis, Tennessee 38103.

28. Defendant John Paul Stevens is an Associate Justice of the United States Supreme Court with a business address of 1 First Street NE, Washington, DC 20543-0002.

29. Defendant David H. Souter is an Associate Justice of the United States Supreme Court with a business address of 1 First Street NE, Washington, DC 20543-0002.

30. Defendant Ruth Bader Ginsburg is an Associate Justice of the United States Supreme Court with a business address of 1 First Street NE, Washington, DC 20543-0002.

31. Defendant Stephen G. Breyer is an Associate Justice of the United States Supreme Court with a business address of 1 First Street NE, Washington, DC 20543-0002.

32. Defendant John W. Magaw is Director of the Bureau of Alcohol, Tobacco, and Firearms with a business address of 650 Massachusetts Avenue NW, Washington, DC 20226-0013.

33. Defendant Janet Reno is the United States Attorney General with a business address of Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001.

FACTS

34. On August 13, 1997 at about 7:30 a.m. plaintiff Bradford Metcalf was traveling home from work when he was pulled over by a pair of Michigan State Police cars at the intersection of Interstate Highway 69 and N Drive in Calhoun County, Michigan.

35. A man dressed in a black SWAT-type uniform, who identified himself as Tony, asked plaintiff for his identification.

36. Plaintiff complied, and asked what this was about.

37. Tony asked plaintiff to step out of the vehicle. A tag on Tony's uniform identified him as SRT.

38. Plaintiff stepped out of the vehicle.

39. Tony asked plaintiff to put his hands behind his back and handcuffed plaintiff.

40. Plaintiff asked again what this was about.

41. Tony told plaintiff that his group had obtained a warrant to search plaintiff's property and that plaintiff was not under arrest but being detained for plaintiff's own protection.

42. Plaintiff asked for the third time what this was about and was told that Tony's supervisor would tell plaintiff later.

43. Plaintiff was taken in a State Police car to the staging point at a gas well in the area of W Drive and 22 Mile Road. After the State Police left the vehicle in which plaintiff had been detained, two deputies with the Calhoun County Sheriffs Department entered it.

44. After identifying themselves, the two deputies told plaintiff if he would cooperate with them maybe no one would get hurt in the entry. The deputies asked plaintiff who was in his house, were there any booby traps, and did plaintiff believe that fellow militia members would make a rescue attempt.

45. Plaintiff agreed to cooperate because plaintiff's fiancee, Paulette Remster, and her three (3) children were in the house.

46. The deputies left the vehicle, telephoned plaintiff's house, and informed Paulette Remster that they had plaintiff in custody and that the house was about to be searched and she should be prepared to leave the house.

47. An FBI agent and ATF agent (who identified himself as Mark Semear) got into the vehicle in which plaintiff was detained. Agent Semear told plaintiff that they had a warrant to search his house for two (2) machineguns—

a .50 caliber belt feed heavy machinegun and another model belt feed machinegun in .308 caliber.

48. At some point Agent Semear read plaintiff his rights.

49. The FBI agent asked plaintiff if he would talk to them.

50. Plaintiff told the FBI agent that it would depend on the subject.

51. The FBI agent asked plaintiff if a recent injury was caused from firing plaintiff's .50 caliber machinegun with headspace and timing problems.

52. Plaintiff told the FBI agent that the injury was from an M-1 (Garand). Plaintiff then told the FBI agent that he thought a lawyer would tell plaintiff to change the subject or shut up. The two agents left the vehicle a short while later.

53. Tony stuck his head in the vehicle and plaintiff asked to talk to agent Semear.

54. Agent Semear got in and plaintiff asked to view the search warrant.

55. Plaintiff read the warrant and told agent Semear that he didn't believe that it was valid. When agent Semear asked why, plaintiff told him there was no affidavit attached.

56. Agent Semear told plaintiff that it was sealed and that a Federal warrant was not required to have one attached. Agent Semear told plaintiff that he could see it in discovery.

57. Plaintiff told agent Semear that he still did not believe that the search warrant was valid.

58. Agent Semear said, "That's too bad, we are going ahead with the search."

59. After an unknown period of time, plaintiff was driven down the road toward his property. Several cars, a Suburban, and a 3/4 ton Ford pickup preceded the vehicle in which the plaintiff was detained. The vehicle was stopped about half way up the driveway. Later the vehicle was backed down the drive to make way for more ATF agents. The vehicle sat at the end of the driveway for about half an

hour before the police allowed plaintiff to move the handcuffs around to the front of his body.

60. Plaintiff estimates that it was about 9:00 a.m. before Tony arrived back at the State Police car. Tony and two State Police officers escorted plaintiff up the drive to plaintiff's residence. The police had plaintiff sit on the bumper of a small travel trailer which was on the property and used by Paulette Remster's daughter.

61. The entrance door of plaintiff's travel trailer was demolished. There were numerous ATF agents on plaintiff's property (approximately 15-18 cars).

62. Agent Semear asked plaintiff if there were any machineguns in the house. Plaintiff told him that there were none.

63. A few minutes later agent Semear came out and said, "Brad, you lied to me. We just found your machineguns—a .50 and two .308s."

64. Plaintiff told agent Semear that those were not machineguns but machinegun part sets that are legal for anyone to purchase and own. The completed right sideplate was the registerable part. Agent Semear was unaware of this and had to call his office to confirm it.

65. Plaintiff was put in an ATF vehicle so the agents could hunt for the sideplates. About an hour later plaintiff's handcuffs were removed because the agents thought plaintiff would not get violent with them.

66. As time passed, the temperature in the vehicle became increasingly warmer. Plaintiff became nauseated from heat and lack of sleep and was allowed to sit in the shade of a tree.

67. Throughout the day, a Hispanic agent continuously tried to convince plaintiff to give up the sideplates. Plaintiff told him that, "They aren't here. I'm waiting to find out how to make these into semi-automatics." The agent did not believe plaintiff.

68. The Hispanic agent asked plaintiff for his computer password. He said if they did not get the password they would take the computer and it might take a couple years to get the computer back. Plaintiff gave him the password and the agents took the computer anyway.

69. About 3:00 p.m. plaintiff asked how much longer the search was going to take. The Hispanic agent said, "As long as it takes. If we have to go all night and all day tomorrow, we will."

70. Plaintiff told the agent he would like to speak to an attorney. Plaintiff was told that he could not speak to an attorney because he had not been arrested but was just being detained. Plaintiff asked to speak to the supervisor. The request for an attorney was repeated to the supervisor who gave plaintiff the same answer.

71. After failing to find the sideplates, the agents had a new warrant issued at 4:42 p.m. for (1) numerous firearms, (2) grenade shells, (3) chemicals such as black powder that could be used to make explosives, (4) a computer and computer software, and (5) video tapes, books, magazines, articles and other printed and handwritten materials that relate to the making and use of firearms and explosives, paramilitary tactics and training, or the associations and relationships among coconspirators.

72. Nothing on the warrant was illegal under state or federal laws. The warrant was not given to the plaintiff until the agents had completed their search.

73. Plaintiff was given a list of what property was being confiscated. Agent Semear told plaintiff that they were taking shortbarreled rifles, machine guns, silencer parts, and a machinegun sideplate.

74. Plaintiff would have to guess that the "shortbarreled rifles" were his three (3) AR-15 pre-ban carbines that, at the last time of possession by plaintiff, were longer than the required 16" barrel length.

75. Plaintiff would have to guess that the "machineguns" were six (6) FAL style rifles—all semi-auto only. Only five (5) were listed by the ATF.

76. Plaintiff would have to guess that the "silencer parts" was aluminum stock. (Agent Semear would not say what they were but that he found them by the lathe.)

77. Plaintiff would have to guess that the "machinegun sideplate" was a piece of flat stock that had been purchased to make a semi-auto U.S. made M-2 .50 caliber. ATF rules state that a completed right sideplate is the registerable part. This plate, at the last time of possession by plaintiff, was not complete.

78. The ATF agents left plaintiff's property about 6:00 p.m. Plaintiff was allowed to see the damage at that time. Plaintiff's house was under construction so the wall insulation was showing in some areas. At its dirtiest the house of the plaintiff had never been soiled as badly as it was when the ATF agents left. Many items were unpacked and left strewn about. It will take plaintiff weeks to put things back in their normal place.

79. The ATF agents left their water jugs and pizza boxes for plaintiff to dispose of. One of the agents was overheard saying, "All we need now is a keg." When the ATF agents finished their search, it sounded like a college party.

LEGAL CLAIMS

80. The behavior of the government agents in searching for the objects described herein would be held unconstitutional under the Second Amendment, U.S. Constitution, had the word "militia" in the Second Amendment not been *changed* by *judicial construction.*

> After many years of public service at the national capital, and after a somewhat close observation of the conduct of public affairs, I am impelled to say that there is abroad in our land a most harmful tendency to

> bring about the amending of constitutions and legislative enactments by means alone of judicial construction.
>
> *Standard Oil Co. v. United States*, 31 S.Ct. 502, 533 (1910) (Justice Harlan, concurring in part and dissenting in part).

81. No federal judge has the authority to change the meaning of any Constitutional provision by changing the meanings of the words used, though the practice is a common one.

> It is one of the essential weaknesses of the Government by Judiciary that, as in all theocratic governments, based upon the sole power to expound a sacred text, its priests cannot afford to admit error without undermining the power of the priesthood and upsetting the form of government in which they are the ruling caste. Error must therefore be perpetuated, no matter what the consequences. For to those who believe in that form of government, that form of government is of much more importance than the alleged sacred text upon the exposition of which it is supposed to be based.
>
> Boudin, 2 *Government by Judiciary* 287-288 (1932).
>
> A cardinal rule in dealing with written instruments is that they shall receive an unvarying interpretation, and that their practical construction is to be uniform. A constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable. A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstances or be modified by public opinion. It is with special reference to the

varying moods of public opinion, and with a view to putting the fundamentals of government beyond their control, that these instruments are framed; and there can be no such steady and imperceptible change in their rules as inheres in the principles of the common law. Those beneficent maxims of the common law which guard person and property have grown and expanded until they mean vastly more to us than they did to our ancestors, and are more minute, particular, and pervading in their protections; and we may confidently look forward in the future to still further modifications in the direction of improvement. Public sentiment and action effect such changes, and the courts recognize them; but a court or legislature which should allow a change in public sentiment to influence it in giving construction to a written constitution not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty; and if its course could become a precedent, these instruments would be of little avail. The violence of public passion is quite as likely to be in the direction of oppression as in any other; and the necessity for bills of rights in our fundamental laws lies mainly in the danger that the legislature will be influenced by temporary excitements and passions among the people to adopt oppressive enactments. What a court is to do, therefore, is *to declare the law as written*, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon it.

Cooley, *Constitutional Limitations* 54-55 (Da Capo reprint 1972) (footnotes omitted) (italics in original).

See also *Lake County v. Rollins*, 9 S.Ct. 651, 652 (1889).

> [T]his Court's constitutional decisions are grounded upon fundamental principles whose content does not change dramatically from year to year, but whose *meanings* are altered slowly and subtly as generation succeeds generation.
>
> *Yates v. Aiken*, 108 S.Ct. 534, 537 (1988)

82. I.e., " . . . he who has the final interpretation of a constitution is, in reality, the maker of it." Boudin, 1 *Government by Judiciary* 130 (1932).

83. The changing of the meanings of words by judicial construction in United States federal courts has resulted in a state of judicial anarchy, chaos, and confusion unequaled in the civilized world.

84. No federal judge, appellate panel, or even Supreme Court justice has the authority to change the meaning of the word "Militia" in the Second Amendment from what its authors intended in 1791.

85. The credible threat of present or future prosecution itself works an injury that is sufficient to confer standing, even if there is no history of past enforcement. *N. H. Right to Life Political Action Com. v. Gardner*, 99 F.3d 8, 13 (1st Cir. 1996).

86. See Memorandum of Law, attached hereto.

RELIEF REQUESTED

1. That this Court issue an Order defining the meaning of the word "Militia" in the Second Amendment as meaning what it meant in 1791.

2. That Supreme Court Justices and defendants in this action, John Paul Stevens, David H. Souter, Ruth Bader Ginsburg, and Stephen G. Breyer be declared incompetent by

reason of bias in all litigation construing the meaning of the word "Militia" in the Second Amendment.

3. That this court declare, pursuant to 28 U.S.C. § 2201, that no federal judge may amend the United States Constitution by changing the meanings of words in that instrument.

4. That this court enjoin defendants John W. Magaw and Janet Reno from any prosecutions in plaintiff's action until the precise definition of the word "Militia" in the Second Amendment has been established, pursuant to 28 U.S.C. § 2202.

5. That this Court declare the addition of words or principles to Supreme Court opinions by the Circuit Courts of Appeals to be an unlawful practice.

Respectfully submitted,

Date: September 5, 1997

/s/ Bradford Metcalf
Bradford Metcalf
22510 V Drive
Olivet, Michigan
(616) 749-2049

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Case No. 1: 97CV756

BRADFORD METCALF
Plaintiff.

v.

BOYCE F. MARTIN, JR., ALICE M. BATCHELDER, DANNY J. BOGGS, R. GUY COLE, JR., MARTHA CRAIG DAUGHTREY, CORNELIA G. KENNEDY, GILBERT S. MERRITT, KAREN NELSON MOORE, DAVID A. NELSON, ALAN E. NORRIS, JAMES L. RYAN, EUGENE E. SILER, JR., RICHARD F. SUHRHEINRICH, BAILEY BROWN, LEROY J. CONTIE, JR., ALBERT J. ENGEL, RALPH B. GUY, JR., NATHANIEL R. JONES, DAMON J. KEITH, ROBERT B. KRUPANSKY, PIERCE LIVELY, HARRY W. WELLFORD, JOHN PAUL STEVENS, DAVID H. SOUTER, RUTH BADER GINSBURG, STEPHEN G. BREYER, JOHN W. MAGAW, JANET RENO,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF PETITION
FOR
DECLARATORY AND INJUNCTIVE RELIEF

ARGUMENT

1. The Second Amendment . . . appears to contain an express limitation on the government's authority. That Amendment provides: "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed." This Court has not had recent occasion to consider the

> nature of the substantive right safeguarded by the Second Amendment.[1] If, however, the Second Amendment is read to confer a *personal* right to "keep and bear arms," a colorable argument exists that the Federal Government's regulatory scheme, at least as it pertains to the purely intrastate sale or possession of firearms, runs afoul of that Amendment's protections. As the parties did not raise this argument, however, we need not consider it here. Perhaps, at some future date, this Court will have the opportunity to determine whether Justice Story was correct when he wrote that the right to bear arms "has justly been considered, as the palladium of the liberties of a republic." 3 J. Story, *Commentaries* § 1890, page 746 (1833) (footnote 2 omitted).
>
> *Printz v. United States*, 117 S.Ct. 2365, 2385-86 (1997) (Justice Thomas, concurring).

2. The *Miller* case referred to by Justice Thomas described "Militia" quite clearly:

> The signification attributed to the term Militia appears from the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia comprised *all males* physically capable of acting in concert for the common defense. "A body

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1 Our most recent treatment of the Second Amendment occurred in *United States v. Miller*, 59 S.Ct. 816 (1939), in which we reversed the District Court's invalidation of the National Firearms Act, enacted in 1934. In *Miller*, we determined that the Second Amendment did not guarantee a citizen's right to possess a sawed-off shotgun because that weapon had not been shown to be "ordinary military equipment" that could "contribute to the common defense." *Id.* at 818. The Court did not, however, attempt to define, or otherwise construe, the substantive right protected by the Second Amendment.

of citizens enrolled for military discipline." And further, that ordinarily when called for service these men were expected to appear bearing arms *supplied by themselves and of the kind in common use at the time.*

Blackstone's Commentaries, Vol. 2, Ch. 13, p. 409 points out "that king Alfred first settled a national militia in this kingdom," and traces the subsequent development and use of such forces.

"The American Colonies In The 17th Century," Osgood, Vol. 1, ch. XIII, affirms in reference to the early system of defense in New England –

"In all the colonies, as in England, the militia system was based on the principle of the assize of arms. This implied the general *obligation* of all adult male inhabitants to possess arms, and, with certain exceptions, to cooperate in the work of defence." "The possession of arms also implied the possession of ammunition, and the authorities paid quite as much attention to the latter as to the former." "A year later [1632] it was ordered that any single man who had not furnished himself with arms might be put out to service, and this became a permanent part of the legislation of the colony [Massachusetts]."

Also "Clauses intended to insure the possession of arms and ammunition by all who were subject to military service appear in all the important enactments concerning military affairs. Fines were the penalty for delinquency, whether of towns or individuals. According to the usage of the times, the infantry of Massachusetts consisted of pikemen and musketeers. The law, as enacted in 1649 and thereafter, provided that each of the former should be armed with a pike, corselet, head-piece, sword, and knapsack. The musketeer should carry a 'good fixed musket,' not

> under bastard musket bore, not less than three feet, nine inches, nor more than four feet three inches in length, a priming wire, scourer, and mould, a sword, rest, bandoleers, one pound of powder, twenty bullets, and two fathoms of match. The law also required that two-thirds of each company should be musketeers."
>
> *United States v. Miller*, 59 S.Ct. 816, 818-19 (1939)

3. The *Miller* case and earlier Supreme Court precedent square quite plainly with the Act of Congress that has been "on the books" since 1792:

> **Militia: composition and classes**
> (a) The militia of the United States consists of all able-bodied males at least 17 years of age and except as provided in section 313 of Title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and female citizens of the United States who are members of the National Guard.
>
> 10 U.S.C. Section 311(a)[2]

4. Section 313 of Title 32 merely refers to those individuals who are already members of the National Guard. The 19th century Supreme Court flatly stated that, "the militia is all citizens capable of bearing arms." *Presser v Illinois*, 116 U.S. 252, 265 (1886). This has been true since the first Militia, Act I Stat. 271 (1792), was enacted by Congress. Today's Supreme Court, in the words of one law professor, "...shamefully refuses to discuss the issue." *The*

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2 This statute was raised by the defendant and airily dismissed by the appellate panel in *United States v. Rybar*, 103 F.3d 273, 286 (3rd Cir. 1996) in a typical display of judicial arrogance and unwillingness to acknowledge an Act of Congress.

Embarrassing Second Amendment, 99 Yale Law Journal 637, 654 (1990).

5. Federal judges have a duty to enforce the Constitution, whether they agree with it or not. Lund, *The Second Amendment, Political Liberty, And The Right To Self Preservation*, 39 Alabama Law Review 103 (1987).

6. The type of dishonest disagreement with the Second Amendment the named defendants have engaged in is easily discerned from their own writings and precedent:

> The question is whether Congress, acting on behalf of the people of the entire Nation, may require local law enforcement officers to perform certain duties during the *interim needed* for the development of a federal *gun control* program.
>
> *Printz v. United States*, 117 S.Ct. 2365, 2386 (1997) (Justice Stevens with whom Justice Souter, Justice Ginsburg, and Justice Breyer join, dissenting).

7. What is not addressed—nor can it be addressed honestly by defendants Stevens, Souter, Ginsburg, and Breyer—is where the federal government obtained the authority to enact a federal gun control program in the first place.

8. Supposedly, Congress has the authority under the interstate commerce clause, Article I Section 8 clause 3, to regulate anything that *affects* interstate commerce, see *Wickard v. Filburn*, 63 S.Ct. 82 (1942) though this was <u>not</u> the meaning understood by the Framers nor even the Supreme Court itself as late as 1935:

> If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its

> domestic concerns would exist only by sufferance of the federal government.
>
> *A.L.A. Schechter Poultry Corporation v. United States*, 55 S.Ct. 837, 850 (1935).

9. Assuming arguendo that the Supreme Court is correct in that "affects interstate commerce" does in fact square with original intent the Second Amendment would still be unaffected.

> If there be any conflict between . . . two provisions, the one found in the Amendments must control, under the well-understood rule that the last expression of the will of the lawmaker prevails over an earlier one.
>
> *Schick v. United States*, 24 S.Ct. 826, 827 (1903)

10. The confusion in the lower courts is self-evident to any casual observer:

> Since the Second Amendment right "to keep and bear Arms" applies only to the right of the State[3] to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a

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3 If by "State" the authors of this opinion meant the *nation*, the Second Amendment is rendered redundant and ridiculous. No nation has ever survived without weapons. If by "State" the authors of this opinion meant the States of the Union, such as Michigan, the opinion ignores an elementary principle of constitutional construction: the Constitution must be interpreted in the light of the common law. *Kepner v. United States*, 24 S.Ct. 797, 803 (1904).

Under the English common law there was no such thing as "States rights" to "collectively possess firearms." See *Miller*, supra. In England—under the common law and to this date—there never *were* any "States" (containing Militias or otherwise).

firearm. *United States v. Miller*, 307 U.S. 174, 178, 59 S.Ct. 816, 83 L. Ed. 1206.

Stevens v. United States, 440 F.2d 144 (6th Cir. 1971)

11. A close reading of the *Miller* case reveals that this simply is *not* what the case holds. I.e., in *this* case the Sixth Circuit Court of Appeals indulged in judicial construction of a Supreme Court case.

12. Those courts holding that the Second Amendment applies only to the "right of the State" have never presented any historical evidence whatsoever to confirm their conclusions.

> [M]ilitia, so prominent a focus of the American right, isn't mentioned in the English right or in later justifications of it. Yet such is the zeal of some American scholars seeking to *confine* a right to bear arms to members of the militia that they have attempted to graft a nonexistent militia clause onto the English right.
>
> Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 137 (1994).

13. Later the meaning of the Second Amendment meant something entirely different.

> It is a serious matter, obviously, to deprive an American citizen of civil rights as important as the right to vote, the right to keep and bear arms,[4] and the right to engage in a chosen business or profession.

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4 Were this decision adhered to and applied by the courts in Second Amendment adjudications, every federal gun law currently on the books would have to be struck down. No act of Congress can authorize a violation of the Constitution. *United States v. Brignoni-Ponce*, 95 S.Ct.

United States v. Sharp, 12 F.3d 605 (6th Cir. 1993)

14. An American citizen is, obviously, an individual. This Alice-in-Wonderland approach to legal reasoning bears some examination.

> "When *I* use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."
>
> "The question is," said Alice, "whether you *can* make words mean so many different things."
>
> "The question is," said Humpty Dumpty, "which is to be master—that's all."
>
> *The Annotated Alice: Alice's Adventures In Wonderland & Through The Looking Glass* by Lewis Carroll 269 (Martin Gardner 1960).

15. Alice-in-Wonderland was a world in which words had no meaning. *Welch v. United States*, 90 S.Ct. 1792, 1803 (1970).

> . . . it is apparent that the enforcement tactics made possible by current firearms laws are constitutionally, legally, and practically reprehensible. Although Congress adopted the Gun Control Act with the primary object of limiting access of felons and other high-risk groups to firearms, the overbreadth of the law has led to neglect of precisely this area of enforcement. . . . The [BATF's] own figures demonstrate that in recent years the percentage of its arrests devoted to felons in possession and persons knowingly selling to

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2574, 2578 (1975). [Congress] . . . is not given power by itself . . . to amend the Constitution. *Meyers v. United States*, 47 S.Ct. 21, 37 (1926).

> them have dropped from 14 percent down to 10 percent of their firearms cases [and that] 55 percent of its gun law prosecutions overall involve persons with no record of a felony conviction, and that a third involve citizens with no police record whatsoever.
>
> *United States v. Cassidy*, 899 F.2d 543, 546 footnote 9 (6th Cir. 1990).
>
> The government also urges that a convicted felon cannot have a restoration of rights without a restoration of his state firearms "rights." We note, however, that there is no individual right to possess a firearm. See *United States v. Warin*, 530 F.2d 103, 106 (6th Cir. 1976), *cert. denied*, 96 S.Ct. 3168 (1976).
>
> *Id.* at 549 footnote 12.

16. The *Warin* case cited in footnote 12 disarms American individual citizens *again*:

> Since the Second Amendment right "to keep and bear Arms" applies only to the right of the State to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm.
>
> It is also established that the *collective right* of the militia is limited to keeping and bearing arms, the possession or use of which "at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, ..." *United States v. Miller*, supra.
>
> *United States v. Warin*, supra at 106 (citations omitted).

17. This "collective right" theory was first enunciated by the Kansas Supreme Court in 1905. *Salina v Blakesly*, 72

Kansas 230; 83 Pacific Reporter 61 (1905). The theory is patently wrong. *Handgun Prohibition*, supra, page 211, note 31. As Professor Kates, in *Handgun Prohibition* pointed out, the word "people" in the First and Fourth Amendments ("individuals") did not change meaning in the Second.

18. Professor Kates' position is borne out by the history of the ratification of the Second Amendment itself. See B. Schwartz, *The Bill of Rights: A Documentary History*, pages 1153-54 (1971).

19. In testimony before the Senate Subcommittee to Investigate Juvenile Delinquency, Senator James L. Buckley (R-NY) reiterated this position during the course of discussion of proposed handgun regulation:

> At the time of the adoption of the Bill of Rights, this country's statesmen were concerned with the need to protect citizens from *government itself*, and the passage of almost two centuries has not negated the validity of this concern. The fact that Article I, section 8, clause 16 of the Constitution grants Congress the power to organize, arm, and discipline the militia clearly indicates a quite different intention for the Second Amendment.
>
> Congressional Record, S. 6889 (daily ed. April 28, 1975) (remarks of Senator Buckley).

20. One must, of course, understand the meaning of the Constitution by the intent of those who wrote it. *Ex Parte Bain*, 7 S.Ct. 781 (1887).

21. There was no question as to what rights the Constitution protected in the nineteenth century:

> But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of government. The powers of the government and the rights and privileges

> of the citizen are regulated and plainly defined by the Constitution itself.
>
> *Scott v. Sandford*, 60 U.S. (19 How.) 393, 449 (1856).
>
> For example, no one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the Territory peaceably to assemble and to petition the Government for the redress of grievances.
>
> Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel anyone to be a witness against himself in a criminal proceeding.
>
> These powers, and others in relation to *rights of person*, which it is not necessary here to enumerate, are, in express and positive terms, denied to the general government . . .
>
> *Id.* at 450.

22. African Americans were denied the protection of the Constitution because they were not considered citizens at that time.

> [I]f they were entitled to the privileges and immunities of citizens . . . [the Constitution] would give to persons of the negro race the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went.
>
> *Id.* at 417.

23. Once African Americans[5] gained the privileges and immunities of citizens, they also gained the right to "keep and carry arms." Or they did until the federal judiciary amended the Constitution and the Congress then enacted statutes based on those judicial amendments (a separation-of-powers issue not addressed here).

> [The Second Amendment] cannot be legislated out of existence . . . The American Congress is not sovereign, our Constitution is. The Constitution has a clear procedure for altering its contents—amendment. If the government and people in their wisdom come to the conclusion that no need for the right of the people to be armed exists, or that such a right does more harm than good, then amendment is the course that should be followed. While it is unconstitutional to legislate a right out of existence, this particular right is threatened with misinterpretation to the point of meaninglessness. Granted, this is a far easier method of elimination than amendment, being much quicker and not requiring the same rigid consensus or forthright discussion of its constitutional relevancy. But it is also the way of danger. For to ignore all evidence of the meaning and intent of one of those rights included in the Bill of Rights is to create the most dangerous sort of precedent, one whose consequences could flow far beyond this one issue and endanger the fabric of liberty.
>
> Malcolm, supra at page 176.
>
> We are not forced into lockstep with our forefathers. But we owe them our considered attention before we

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5 At current rates of conviction in our nation's courts, almost *all* black males may be legally disarmed by early in the next century.

disregard a right they felt it imperative to bestow upon us.

Malcolm, supra at page 177.

CONCLUSION

Plaintiff is entitled to the relief requested.

Respectfully submitted,

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